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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/581,315

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Ilkka Limma

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09/14/2010

THE NATH LAW GROUP  
112 South West Street  
Alexandria, VA 22314

EXAMINER

JANG, CHRISTIAN YONGKYUN

ART UNIT

PAPER NUMBER

3735

MAIL DATE

DELIVERY MODE

09/14/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/581,315	<b>Applicant(s)</b> LIMMA ET AL.	
	<b>Examiner</b> CHRISTIAN JANG	<b>Art Unit</b> 3735	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-36 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Claim Objections***

2. Claims 1 and 34 are objected to because of the following informalities:

- a. As to claim 1, line 13, "With" should read "with".
- b. As to claim 34, line 10, "essen35 tially" should read "essentially".

Appropriate correction is required.

3. Claim 7 is objected to because they include reference characters which are not enclosed within parentheses. The use of reference characters is considered as having no effect on the scope of the claims. Since the reference characters are not afforded patentable weight, the reference characters enclosed within parentheses should be deleted from the claims. Correction is requested.

### ***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1-11 and 24-32 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.
6. As to claims 1-11, method claims must meet a specialized, limited meaning to qualify as a patent-eligible process claim. The test for a method claim is to whether the claimed method is tied to a particular machine or apparatus or transforms a particular article to a different state or

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thing. The machine or transformation must impose meaningful limits on the method claim's scope to pass the test. This means reciting a specific machine or a particular transformation of a specific article in an insignificant step is not sufficient to pass the test. As applicant's claims fail to recite a specific apparatus in carrying out any of the method steps, they fail to be patent-eligible processes.

7. As to claims 24-32, computer programs claimed as computer listings *per se*, i.e., the descriptions or expressions of the programs, are not physical "things." They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized. See *Lowry*, 32 F.3d at 1583-84, 32 USPQ2d at 1035. As applicant's claims fail to recite a physical structure, the claims fail to be a patent-eligible.

### ***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Stubbs et al. (US 2004/0260191).

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10. As to claims 1, 12, and 24, Stubbs teaches a method and corresponding device for comparing a previously record activity to an ongoing activity using a measurement device (6) comprising loading measurement data of a previously recorded real continuous activity ([0074]), comparing, during an ongoing continuous activity, the loaded data to current data ([0075]), and providing a user of the measurement device with a feedback in response to the comparison at any given time ([0073]; [0078]; 7). Stubbs further teaches a data processing unit (66), a memory (67), and input means to receive measurement data of a previously recorded activity (64), as well as programming instructions ([0093]).
11. As to claims 2, 13, and 25, Stubbs teaches the measurement data comprises a plurality of consecutive measurement point sets ([0078] - real time data from continuous measurements) that comprise a GPS position ([0078]).
12. As to claims 3, 14, and 26, Stubbs teaches the comparing of corresponding measurement points ([0073]).
13. As to claims 4, 15, and 27, Stubbs teaches comparing heart rate ([0079]).
14. As to claims 5, 16, and 28, Stubbs teaches the setting of at least one predetermined limit for providing the user of the device with feedback ([0038])
15. As to claims 6, 17, and 29, Stubbs teaches feedback when the predetermined limit is exceeded ([0064] - time variability exceeds predetermined level).
16. As to claims 7, 18, and 30, Stubbs teaches feedback when the limit is gone under ([0038] - does not meet predetermined target)
17. As to claims 8, 19, and 31, Stubbs teaches feedback comprising sound signals ([0059]).
18. As to claims 9, 20, and 32, Stubbs teaches visually readable feedback ([0059]).

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19. As to claims 10 and 21, Stubbs teaches that the display is integrated into the measurement device (Fig. 9).

20. As to claims 11, 22, Stubbs teaches that the display is an external device connected to the measurement device ([0033] - display on treadmill screen).

21. As to claim 23, Stubbs teaches a hand-held measurement device (Fig. 9).

22. As to claim 33, Stubbs teaches a computer readable medium ([0093] - programming stored in memory).

23. As to claim 34, Stubbs teaches a system for transferring measurement data relating to an activity, comprising a computer ([0033]), a first memory on the computer comprising previously recorded activity ([0033] - inherent as it mentions storing of data), a measurement device connected to the computer (7), a second memory in the measurement device to store measurement data (67) of the same type of route ([0073]), output means to output previously recorded measurement data ([0084]), input means configured to receive the measurement data ([0084]).

24. As to claim 35, Stubbs teaches the measurement data comprises a plurality of consecutive measurement point sets ([0078] - real time data from continuous measurements) that comprise a GPS position ([0078]).

25. As to claim 36, Stubbs teaches the setting means configured to set at least one predetermined limit for providing the user of the device with feedback ([0038]).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTIAN JANG whose telephone number is (571)270-3820.

The examiner can normally be reached on Mon-Thurs (10-9:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles A. Marmor, II/  
Supervisory Patent Examiner  
Art Unit 3735

CJ  
/C. J./  
Examiner, Art Unit 3735  
8/30/10